

HOUSE BILL NO. 93

INTRODUCED BY K. GILLAN, B. MCCARTHY, B. TASH, C. YOUNKIN, J. TESTER, M. LINDEEN,
P. CLARK

BY REQUEST OF THE ENVIRONMENTAL QUALITY COUNCIL

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING THE CONDEMNEE AND CONDEMNOR IN A
CONDEMNATION ACTION THE OPPORTUNITY TO PROVIDE A STATEMENT OF APPROPRIATE DAMAGE
REDUCTION MEASURES; ~~ALLOWING THE COURT TO INCLUDE APPROPRIATE PAYMENT FOR DAMAGES~~
~~IN THE PRELIMINARY CONDEMNATION ORDER;~~ REQUIRING THAT THE CONDEMNATION
COMMISSIONERS DETERMINE THE APPROPRIATE PAYMENT FOR DAMAGES AFTER EXAMINING THE
PROPERTY; ALLOWING FOR THE INCLUSION OF APPROPRIATE PAYMENT FOR DAMAGES IN THE FINAL
CONDEMNATION ORDER; AND AMENDING SECTIONS 70-30-110, 70-30-203, ~~70-30-206,~~ 70-30-301,
AND 70-30-309, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 70-30-110, MCA, is amended to read:

"70-30-110. Survey and location of property to be taken -- greatest public good -- least private injury. (1) In all cases ~~where in which~~ land is required for public use, the state or its agents in charge of ~~such the public~~ use may survey and locate the ~~same, land to be used, but it~~ The use must be located in the manner ~~which that~~ that will be most compatible with the greatest public good and the least private injury, and the location is subject to the provisions of 70-30-206. The state or its agents in charge of ~~such the~~ public use may, after giving 30 days' written notice to the owners and persons in possession of the land, enter upon the land and make examination, surveys, and maps ~~thereof, of the land, and such~~ The entry ~~shall does not~~ constitute ~~no a~~ cause of action in favor of the owners of the land except from injuries resulting from negligence, ~~wantonness, or malice~~ intentional acts. Upon written request of the state or its agents, the owner shall provide the names and addresses of all persons who are in possession of ~~his the~~ the owner's land within 14 days from receipt of the written notice. The state or its agents shall within 14 days from receipt of ~~such that~~ that information furnish written notice to ~~such the listed~~ the listed persons.

(2) Prior to or at the time of rejection of the final written offer as referred to in 70-30-111(4), the

1 condemnee may provide to the condemnor the condemnee's claim of appropriate measures that the
2 condemnee considers necessary to minimize damages to the property directly affected by the project as
3 well as to minimize damages incurred to the remaining parcel of property."

4
5 **Section 2.** Section 70-30-203, MCA, is amended to read:

6 **"70-30-203. Contents of complaint.** (1) The complaint for condemnation must ~~allege~~ contain:

7 ~~(1)(a)~~ (a) the name of the corporation, association, commission, or person in charge of the public use
8 for which the property is sought to be taken, who ~~must be styled~~ is the plaintiff;

9 ~~(2)(b)~~ (b) the names of all owners, purchasers under contracts for deed, mortgagees, and lienholders
10 of record and any other claimants ~~of the property~~ of record of the property sought to be taken, if known,
11 or a statement that they are unknown, who ~~must be styled~~ are the defendants;

12 ~~(3)(c)~~ (c) a statement of the right of the plaintiff to take the property for public use;

13 ~~(4)(d)~~ (d) statements of each of the facts necessary to be found in 70-30-111;

14 (e) a description of each interest in real property sought to be taken, a statement of whether the
15 property sought to be taken includes the whole or only a part of the entire parcel or tract, and a statement
16 that the interest sought is the minimum necessary interest. All parcels lying in the county and required for
17 the same public use may be included in the same or separate proceedings, at the option of the plaintiff,
18 but the court may consolidate or separate them to suit the convenience of the parties.

19 (f) a statement of the condemnor's claim of appropriate payment for damages to the property
20 proposed to be taken as well as to any remaining parcel of property.

21 ~~(5)(2)~~ (2) if if a right-of-way is sought, in addition to the items listed in subsection (1), the complaint
22 must show the location, general route, and termini and must be accompanied with a map thereof of the
23 route, so far as the same route is involved in the action or proceeding;

24 ~~(6)~~ a description of each interest in real property sought to be taken and whether the same
25 includes the whole or only a part of the entire parcel or tract and a statement that the interest sought is
26 the minimum necessary interest. All parcels lying in the county and required for the same public use may
27 be included in the same or separate proceedings, at the option of the plaintiff, but the court may
28 consolidate or separate them to suit the convenience of the parties.

29 ~~(7)(3)~~ (3) (a) if if a sand, stratum, or formation suitable for use as an underground natural gas storage
30 reservoir is sought to be ~~appropriated~~ taken, in addition to the items listed in subsection (1), the complaint

1 ~~must include~~ a description ~~thereof~~ of the reservoir and of the land in which ~~it~~ the reservoir is alleged to
 2 be contained and a description of all other property and rights sought to be ~~appropriated~~ taken for use in
 3 connection with the ~~appropriation of the right to store natural gas in and withdraw natural gas from such~~
 4 the reservoir.

5 (b) In addition, the complaint ~~shall~~ must state facts showing that:

6 (i) the ~~underground~~ reservoir is ~~one~~ subject to ~~appropriation~~ being taken by the plaintiff;

7 (ii) ~~also stating that~~ the underground storage of natural gas in the land sought to be ~~appropriated~~
 8 taken is in the public interest;

9 (iii) ~~that~~ the ~~underground~~ reservoir is suitable and practicable for natural gas storage;

10 (iv) ~~that~~ the plaintiff in good faith has been unable to acquire the rights sought to be ~~appropriated~~
 11 hereunder taken; and

12 (v) a statement that the rights and property sought to be ~~appropriated~~ taken are not prohibited
 13 by law; from being taken.

14 (c) ~~and in addition, the~~ The complaint must be accompanied by a certificate from the board of oil
 15 and gas conservation as ~~set forth~~ provided in 82-10-304."

16

17 ~~Section 3. Section 70-30-206, MCA, is amended to read:~~

18 ~~"70-30-206. Powers of court -- preliminary condemnation order. (1) The~~ In a condemnation
 19 proceeding, the court has power to may:

20 ~~(a) regulate and determine the place and manner of:~~

21 ~~(i) making the connections and crossings and enjoying the common uses mentioned in~~
 22 ~~70-30-103(1)(e); and~~

23 ~~(ii) of the occupying of canyons, passes, and defiles for railroad purposes, as permitted and~~
 24 ~~regulated by the laws of this state or of the United States; or~~

25 ~~(b) limit the interest in real property sought to be appropriated~~ taken if in the opinion of the court
 26 the interest sought is not necessary.

27 ~~(2) (a) If the court finds and concludes from the evidence presented that the public interest~~
 28 ~~requires the taking of such an interest in real property and that the plaintiff condemnor has met his the~~
 29 ~~burden of proof under 70-30-111, it must forthwith make and the court shall enter a preliminary~~
 30 ~~condemnation order providing that the condemnation of the interest in real property may proceed in~~

1 accordance with the provisions of this chapter.

2 ~~—— (b) In order to comply with the provisions of 70-30-110, the court shall determine, based on the~~
3 ~~evidence presented, the appropriate payment for damages to the property taken as well as to any~~
4 ~~remaining parcel of property that may be adversely impacted by the project.~~

5 ~~—— (3) (a) If the property sought to be appropriated taken is a sand, stratum, or formation suitable~~
6 ~~for use as an underground natural gas storage reservoir and the existence and suitability of it the property~~
7 ~~for such that use has been proved by plaintiff the condemnor based upon substantial evidence, the order~~
8 ~~of the court shall must direct the condemnation commissioners to ascertain and determine the amount to~~
9 ~~be paid by the plaintiff condemnor to each person for his each person's interest in the property sought to~~
10 ~~be appropriated taken for use as such an underground natural gas storage reservoir and/or as:~~

11 ~~—— (b) In addition to or in lieu of the amount paid under subsection (3)(a), the court may direct the~~
12 ~~commissioners to determine the annual rental for:~~

13 ~~—— (i) the use of such the underground natural gas storage reservoir;~~

14 ~~—— (ii) and for the use of so much of the surface as is required in the operation of the underground gas~~
15 ~~storage reservoir and for the use in connection with the creation, operation, and maintenance thereof of~~
16 ~~the reservoir; and~~

17 ~~—— (iii) for all the native gas contained in said the reservoir as compensation and damages by reason~~
18 ~~of the appropriation of such property. However, the amount to be paid for such the native gas and all~~
19 ~~thereof shall be no may not be less than the market value of such the gas.~~

20 ~~—— (4) The court shall appoint three persons, qualified and recommended as experts and~~
21 ~~recommended as such by the board of oil and gas conservation, to assist and advise the commissioners~~
22 ~~in determining the compensation and damages to be paid by plaintiff the condemnor to each person for~~
23 ~~his each person's interest in the property sought to be appropriated, taken, and the The fees and expenses~~
24 ~~of such persons shall be the experts are chargeable as costs of the proceedings to be paid by the plaintiff~~
25 ~~condemnor.~~

26 ~~—— (4)(5) After a complaint as described in 70-30-203 is filed and prior to the issuance of the~~
27 ~~preliminary condemnation order, all parties shall proceed as expeditiously as possible, but without~~
28 ~~prejudicing any party's position, with all aspects of the preliminary condemnation proceeding, including~~
29 ~~discovery and trial. The court shall give such the proceedings expeditious and priority consideration. The~~
30 ~~preliminary condemnation proceeding shall must be tried by the court sitting without a jury."~~

SECTION 3. SECTION 70-30-301, MCA, IS AMENDED TO READ:

"70-30-301. Hearing -- judge to preside -- determinations by condemnation commissioners. (1)

~~Immediately upon nomination and appointment of commissioners under 70-30-207, the same shall proceed to The condemnation commissioners shall~~ meet at the time and place stated in the order appointing them, ~~which The meeting time shall may~~ not be more than 10 days after the order of ~~appointing appointment,~~ and ~~proceed to~~ The commissioners shall examine the lands sought to be ~~appropriated taken~~. At a time appointed by the judge and within ~~said the~~ 10-day period, ~~they the commissioners~~ shall hear the allegations and evidence of all persons interested in each ~~of the several parcels~~ parcel of land.

(2) ~~Such The~~ hearing ~~shall must~~ be attended by and presided over by the presiding judge, who shall make all necessary rulings upon procedure and the admissibility of evidence.

(3) (a) At the conclusion of the ~~aforsaid~~ hearing, the ~~court or~~ judge shall instruct the commissioners as to the law applicable to their deliberations and shall instruct them that their duty is to determine, based solely upon ~~the basis of said their~~ examination of lands, the evidence produced at the hearing or hearings, and the instructions of the court, the ~~following:~~ appropriate findings provided for in subsections (3)(b) through (3)(d).

~~(a)(b)~~ The commissioners shall determine the current fair market value of the real property sought to be ~~appropriated taken~~ and all improvements ~~thereon~~ pertaining to the ~~realty~~ real property and of each ~~and every~~ separate estate and interest ~~therein in the real property and improvements~~. If ~~it the real property~~ consists of different parcels, the current fair market value of each parcel and each estate or interest ~~therein in the real property~~ must be separately assessed.

~~(b)(c)~~ (i) ~~if If~~ the property sought to be ~~appropriated taken~~ constitutes only a part of a larger parcel, the commissioners shall determine the depreciation in current fair market value ~~which that~~ will accrue to the ~~portion not sought to be condemned remaining parcel~~ by reason of its severance from the ~~portion sought to be condemned the condemnation~~ and the construction of the improvements in the manner proposed by the ~~plaintiff, condemnor~~.

~~(c)(ii)~~ separately, The commissioners shall also determine how much the ~~portion not sought to be condemned remaining parcel~~ and each estate or interest ~~therein in the remaining parcel~~ will be benefited, if at all, by the construction of the improvements proposed by the ~~plaintiff, condemnor, and if If~~ the benefit ~~shall be is~~ equal to the amount assessed under subsection ~~(3)(b) (3)(c)(i), the owner of the parcel shall be~~

1 ~~allowed no compensation except~~ compensation to the condemnee is limited to the value of the portion
 2 ~~taken, but~~ However, if the ~~benefits shall be~~ benefit is less than the amount assessed under subsection
 3 ~~(3)(b) (3)(c)(i), the former shall benefit to the condemnee must~~ be deducted from the latter, amount
 4 assessed under subsection (3)(c)(i) and the remainder shall be is the only amount allowed in addition to
 5 the current fair market value;

6 (d) ~~if~~ If the property sought to be ~~condemned be~~ taken is for a railroad, the commissioners shall
 7 also determine the cost of good and sufficient fences along the line of ~~such the~~ the railroad and the cost of
 8 cattle guards where fences may cross the line of ~~such the~~ the railroad.

9 (e) Through examination of the property, the commissioners shall determine the appropriate
 10 payment for damages to the property taken, as well as to any remaining parcel of property that may be
 11 adversely impacted by the project, to assist the court in making a final determination pursuant to
 12 70-30-309.

13 (4) ~~Where~~ When there are two or more estates or divided interests in property sought to be
 14 ~~condemned taken,~~ the plaintiff condemnor is entitled to have the amount of the award for said the property
 15 first determined, as hereinbefore stated, as between plaintiff the condemnor and all defendants
 16 condemnees claiming any interests therein interest in the property. Thereafter in In the same proceeding,
 17 the respective rights of each of such defendants the condemnees in and to the total award shall must be
 18 determined by the commissioners, under supervision and instruction of the court, and the award must be
 19 apportioned accordingly."

20

21 **Section 4.** Section 70-30-309, MCA, is amended to read:

22 **"70-30-309. Final order of condemnation -- contents -- vesting upon filing.** (1) When payments
 23 have been made and the bond, if appropriate, has been given; if the plaintiff elects to give one, as required
 24 by 70-30-307 and 70-30-308, the court ~~must~~ shall make a final order of condemnation, ~~which~~ The order
 25 must describe the property condemned, and the purposes of such the condemnation, and any appropriate
 26 payment for damages to the property actually taken as well as to any remaining parcel of property that
 27 may be adversely affected by the taking.

28 (2) A copy of the order must be filed in the office of the county clerk and recorder, and ~~thereupon~~
 29 upon filing, the property described ~~therein shall vest in the order vests~~ in the plaintiff condemnor for the
 30 purposes ~~therein~~ specified in the order."

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- END -